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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RUN THEM SWEET, LLC, a
California limited liability company,
on behalf of themselves and those
similarly situated,

Plaintiff,

v.

CPA GLOBAL LIMITED, a foreign
entity formed under the laws of the
Island of Jersey, Channel Islands, and
CPA GLOBAL NORTH AMERICA,
LLC, a Delaware limited liability
company,

Defendants.

CASE NO. 3:16-cv-03662

CLASS ACTION COMPLAINT

- (1) Breach of Contract;
- (2) Unjust Enrichment - Restitution;
- (3) Violation of California's Unfair
Competition Law
(Cal. Bus. & Prof. Code § 17200)

DEMAND FOR JURY TRIAL

1 Plaintiff Run Them Sweet, LLC (“RTS” or “Plaintiff”), on behalf of itself and
2 all other similarly situated persons and/or entities, brings this action against
3 Defendants CPA Global Limited and CPA Global North America, LLC (together,
4 “Defendants”), and alleges, upon personal knowledge as to its own conduct, and
5 upon information and belief as to the conduct of others, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff RTS is a medical diagnostics company focused on the
8 nutritional state of a patient. RTS holds United States (U.S.) patents and patent
9 applications that are registered in foreign countries. To maintain the foreign
10 registration of these patents, RTS must pay annual fees to the foreign patent
11 registrars in each country for each of its patents.

12 2. To manage these payments, RTS contracted with CPA Global Limited
13 (“CPA”), which agreed to handle the payments in exchange for a fixed fee per patent.

14 3. Under the contract, attached hereto as Exhibit “A”, CPA was to pass on
15 the costs of registration in the foreign country to RTS.

16 4. However, CPA greatly overcharged RTS by inflating certain fees and
17 outright inventing others. CPA does not even adhere to its own rate structure.

18 5. In order to hide this conduct, CPA issues opaque invoices that are
19 devoid of any meaningful breakdown of its billing practices so that it is nearly
20 impossible for its clients to tell if they are being overcharged.

21 6. CPA’s contracts are also themselves misleading. For example, CPA
22 makes it appear that its so-called “Country Charges” are fees imposed by foreign
23 entities, when they are simply additional charges made up by CPA.

24 7. On information and belief, Defendants use the same contract for all of
25 their clients as it does for RTS and overcharges them in a similar manner.

26 8. RTS brings this class action lawsuit on behalf of all U.S. patent holders
27 who have been injured by Defendants’ systematic practice of overbilling and
28

1 inflating of fees charged to its clients who engage Defendants to renew their patents
2 annually in foreign countries.

3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over this matter pursuant to the Class Action
5 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d)(2), because at least one
6 Plaintiff or class member is from a different state than at least one Defendant, there
7 are more than 100 members of the class and the aggregate amount in controversy
8 exceeds \$5,000,000, exclusive of attorneys’ fees, interest, and costs.

9 10. Defendants are subject to personal jurisdiction because Defendant CPA
10 Global Limited conducts substantial business in the State of California directly and
11 through its affiliate Defendant CPA Global North America, LLC, such that they have
12 significant, pervasive and substantial contacts with the State of California.

13 11. Venue is proper in this District pursuant to 28 U.S.C. §1391(b),
14 because a substantial part of the events giving rise to Plaintiff’s claims occurred in
15 this District and because the Plaintiff resides in this District.

16 **PARTIES**

17 12. RTS is a limited liability company duly organized under the laws of the
18 State of California, having its headquarters and principal place of business in San
19 Francisco, California.

20 13. Defendant CPA Global Limited is a foreign entity organized under the
21 laws of the island of Jersey, Channel Islands, with its headquarters and principal
22 place of business located on the island of Jersey, Channel Islands. Defendant
23 transacts business in the State of California by offering for sale and selling its
24 services to customers in California and in this District.

25 14. Jersey is a party to the Hague Convention of 15 November, 1965, on
26 the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial
27 matters. Accordingly, Defendant may be served with process pursuant to Federal
28 Rule of Civil Procedure 4(f)(2)(A), by sending the document to the central authority

1 of Jersey, The Attorney General, Jersey, Channel Islands, for service at Liberation
2 House, Castle Street, St. Helier, JE1 1BL, Jersey, Channel Islands.

3 15. Defendant CPA Global North America, LLC, is an entity formed under
4 the laws of the State of Delaware and, on information and belief, is the U.S. affiliate
5 of CPA Global Limited. On information and belief, CPA Global North America,
6 LLC maintains an office in San Mateo, California and, at all relevant times for
7 purposes of this Complaint, Defendant has done substantial business in the State of
8 California.

9 **FACTUAL ALLEGATIONS**

10 16. RTS is the owner of numerous patents and patent applications (the
11 “Patents”) around the world. The Patents must be periodically renewed in each
12 country in order to maintain and protect RTS’s intellectual property rights.

13 17. Such renewals require the payment of certain fees to, and may require
14 the filing of documents with, patent offices in each country in which Plaintiff has
15 registered Patents. Timely renewal of patents in each country is vital because patents
16 are lost or abandoned if not properly renewed.

17 18. CPA is in the business of managing foreign registration payments for
18 U.S. patents. In order to manage its payments, RTS entered into the Renewal Service
19 Agreement (“Agreement”) with CPA on March 18, 2016. The Agreement set forth
20 the terms on which CPA would renew RTS’s patents. Section 5.1 of the Agreement
21 states that:

22 Our basic fees in relation to Services that comprise the
23 provision of renewal of intellectual property rights
24 registrations are set out in Clause 4 of the Operating
25 Procedures.

26 19. Clause 4 of the “Operating Procedures” states that: “We will charge you
27 an administration charge based on Schedule 1, attached.”
28

1 20. Schedule 1 sets forth a list of “Administration Charges” based on the
2 number of annual payments the client makes. The more annual payments, the lower
3 the per-patent Administration Charge.

4 21. The Administration Charge was agreed to be the only charge imposed
5 by CPA for its services. The rest of the charges were agreed to be costs passed on
6 to clients by CPA.

7 22. The next section, Section 5.2, states that:

8 In addition to our fees there will be also be payable by you
9 the charges made by the relevant registries (“**Official**
10 **Fees**”) in each jurisdiction and which vary from time to
11 time and, where applicable “**Country Charge**” [sic]
12 which is set out in a tariff (which may vary from time to
13 time), a current copy of which is available on request.

14 23. The language “In addition to our fees” leads clients to believe that what
15 follows, including the “Country Charge” are not fees charged by CPA.

16 24. In addition, the placement of the description of the “Country Charge”
17 as part of the sentence describing the fees charged by the “relevant registries” leads
18 clients to believe that the “Country Charge” is a charge imposed by foreign offices,
19 not by CPA.

20 25. Further, the description of the “Country Charge” as something that is
21 found on a “tariff” leads the clients to believe that the “Country Charge” is a
22 government-imposed fee.

23 26. However, the “Country Charge” is not related to any charges or tariffs
24 imposed by foreign patent registrars. It is a charge that CPA invented and is
25 effectively a second fee charged by CPA.

26 27. Section 5.3 of the Agreement further states that when currency must be
27 exchanged, such currency will be “converted at our rates from time to time.” But
28 these rates are far in excess of any reasonable exchange rate on the relevant dates.

1 28. When RTS was invoiced by CPA it was for amounts far in excess of
2 what RTS should have been charged based on the Agreement. (*See* attached Exhibit
3 “B”). The invoices did not even correspond to CPA’s own fee schedule.

4 29. In addition, the invoices only provided a total amount due for each
5 renewal. They failed to give any details, explanations, or itemizations.

6 30. For example, an invoice sent to RTS by CPA in July of 2015 charged
7 RTS \$1006.63 for a renewal in Europe. The invoice did not list a breakdown of the
8 charges. None of CPA’s invoices do.

9 31. According to the schedule provided by CPA, the Administrative Fee
10 charged by CPA would be \$200, leaving \$806.63 in other charges. According to the
11 rates charged by the foreign patent office, the foreign patent office fee was €465
12 (Euros). On the date of the invoice, the exchange rate was roughly \$0.905 U.S.
13 Dollars to one Euro, which would yield a U.S. Dollar cost for the foreign patent
14 office fee of \$513.81.

15 32. There are no agent fees or other fees associated with renewal in the
16 country at issue.

17 33. According to the contract, RTS should have been charged \$713.81 but
18 was charged, and paid, \$1006.63 – \$292.82 more than it should have been charged.

19 34. For another renewal in Canada, RTS was charged, and paid, \$686.68.

20 35. According to the schedule provided by CPA, the Administrative Fee
21 charged by CPA would be \$200, leaving \$486.68 in other charges. According to the
22 rates charged by the foreign patent office, the “Official Fee” was \$100 Canadian.
23 On the date of the invoice, the exchange rate was roughly \$1.27 USD to one
24 Canadian dollar, which would yield a dollar cost for the foreign patent office fee of
25 \$78.74.

26 36. In addition, there is an agent fee required in Canada of approximately
27 \$125 Canadian. On the date of the invoice, \$125 Canadian would be \$98.46 USD.

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37. Adding the “Official Fee” and the Agent Fee to CPA’s \$200 Administrative Fee equals \$375.20.

38. Accordingly, under the contract, RTS should have been charged approximately \$375.20, but was charged, and paid, \$686.68 – \$311.48 more than it should have been charged.

39. The invoices received by RTS and the members of the Class do not contain a breakdown of charges. This opacity is an unfair practice which makes it impossible for members of the Class to find any explanation for these overcharges.

CLASS ACTION ALLEGATIONS

40. RTS brings this action as a class action pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of a class (the “Class”) defined as: All persons or entities who entered into a Renewal Service Agreement using Defendants’ standard agreements. RTS also seeks to represent a subclass of all Class members who reside in California (the California Subclass”).

41. Excluded from the Class are: (i) Defendants and its employees, principals, affiliated entities, legal representatives, successors, and assigns; (ii) any entity in which Defendant has a controlling interest, and Defendants’ legal representatives; (iii) the judges to whom this action is assigned and any members of their immediate families; and (iv) any member of the Class who timely elects exclusion.

42. RTS reserves the right to amend or modify the definition of the Class or Subclass with greater specificity or further division into subclasses as discovery and the orders of this Court warrant.

43. **Numerosity.** The members of the Class and the Subclass are each so numerous that their individual joinder is impracticable. The proposed Class and Subclass each likely contain thousands of members. The true number of Class and Subclass members can be ascertained through information and records in Defendants’ exclusive possession, custody or control.

1 44. **Commonality.** There are questions of law and fact common to the
2 Class and Subclass which predominate over any questions which may affect only
3 individual members of the Class, including but not limited to the following:

- 4 (a) Whether Defendants breached the Renewal Service Agreements
5 with Plaintiff and the Class by systematically overcharging
6 Plaintiff and the Class;
7 (b) Whether Defendants have been unjustly enriched;
8 (c) The nature of the “Country Charge” and whether it is a charge
9 imposed by Defendants;
10 (d) Whether Defendants have inflated their own “Administrative
11 Charges”;
12 (e) Whether Defendants have inflated the “Official Fees”;
13 (f) Whether the Agreements are an unfair or deceptive business
14 practice under California law;
15 (g) Whether the exchange rates charged by Defendants are
16 unlawfully excessive under the contracts;
17 (h) Whether Defendants’ failure to provide detailed invoices is an
18 unfair or deceptive practice;
19 (i) Whether Defendants’ acts and practices violated the California
20 Unfair Competition Law (“UCL”); and
21 (j) Whether declaratory or injunctive relief should be appropriately
22 awarded to the Plaintiff and the Class.

23 45. **Typicality.** RTS’s claims are typical of the claims of the members of
24 the Classes because Plaintiff’s and the Classes’ claims arise out of the same course
25 of conduct by Defendants and are based on the same legal theories. Plaintiff and the
26 members of the Classes were overcharged, deceived, and subjected to an unfair
27 business practice in the same manner in their transactions with Defendants, and their
28 injuries are a direct proximate result of the same wrongful overbilling practices.

1 46. **Adequacy of Representation.** RTS will fairly and adequately protect
2 the interests of the Class because its interests do not conflict with the interests of the
3 members of the Classes they seek to represent. RTS has retained counsel competent
4 and experienced in prosecuting class actions, and they intend to prosecute this action
5 vigorously.

6 47. **Rule 23(b)(3).** Questions of law and fact common to the Classes
7 predominate over any questions affecting only individual members, and a class
8 action is a superior method for adjudicating this controversy.

9 48. Questions of law and fact common to the Classes predominate over
10 individual issues. Resolution of the questions listed in ¶ 44, *supra*, will advance the
11 litigation on behalf of all Class members. Individual issues are likely limited to the
12 amount of damages.

13 49. A class action is superior to other methods of litigating this dispute.
14 The monetary damages or other pecuniary loss suffered by individual members of
15 the Class is relatively small compared to the burden and expense that would be
16 entailed by individual litigation of claims against the Defendants. It would thus be
17 virtually impossible for the Class, on an individual basis, to obtain effective redress
18 for the wrongs done to them. As such, individual members of the Class do not have
19 a strong interest in controlling the prosecution of separate actions. Furthermore,
20 even if Class members could afford such individualized litigation, the court system
21 could not. Individualized litigation would create the danger of inconsistent or
22 contradictory judgments arising from the same set of facts. Individualized litigation
23 would also increase the delay and expense to all parties and the court system from
24 the issues raised by this action. By contrast, the class action device provides the
25 benefits of adjudication of these issues in a single proceeding, economies of scale,
26 and comprehensive supervision by a single court, and presents no unusual
27 management difficulties under the circumstances here. Plaintiff knows of no other
28 litigation addressing this issue on a class wide basis

1 50. **Rule 23(b)(1) and (b)(2).** In the alternative, the Class may also be
2 certified because:

3 (a) the prosecution of separate actions by individual Class members
4 would create a risk of inconsistent or varying adjudication with
5 respect to individual Class members that would establish
6 incompatible standards of conduct for the Defendants;

7 (b) Defendants have acted or refused to act on grounds generally
8 applicable to the Class thereby making appropriate final
9 declaratory and/or injunctive relief with respect to the members
10 of the Class as a whole; and/or

11 (c) Certification of specific issues such as Defendants' liability is
12 appropriate.

13 51. Adequate notice can be given to the Class directly using information
14 maintained in Defendants' records or through notice by publication.

15 52. All Class members have been damaged in the same fashion by the same
16 conduct. The degree of damages suffered by individual members is calculable
17 according to an ascertainable formula.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Breach of Contract**

21 **(Brought on behalf of the Class)**

22 53. Plaintiff re-alleges and incorporates by reference each preceding
23 paragraph as though set forth at length herein.

24 54. Defendants entered into written contracts with Plaintiff and the Class
25 for renewal of patents. The contracts included that Defendants would charge
26 "Official Fee(s)" and "Country Charge(s)" to Plaintiff and the Class.

27 55. Plaintiff performed all obligations under the contract by paying all
28 invoiced fees and charges associated with the renewal of its patents.

1 56. All conditions required by the contract for Defendants' performance
2 occurred.

3 57. Defendants breached these contracts by, among other things: (i)
4 overcharging Plaintiff and the Class for services provided under the contract in
5 excess of agreed upon rates outlined in Defendants' fee schedule, (ii) invoicing
6 Plaintiff and the Class in an opaque manner, and (iii) concealing both the types of
7 fees and the specific amount of fees it charged Plaintiff and the Class.

8 58. Defendants' breaches of contract caused actual damages to Plaintiff and
9 the Class. Plaintiff and the Class suffered pecuniary damages as a result of
10 Defendant's breach of contract, and were forced to expend substantial time, effort,
11 and money in the attempt to determine the extent of Defendants' overbilling.

12 **SECOND CAUSE OF ACTION**

13 **Unjust Enrichment – Restitution**

14 **(Brought on behalf of the Class)**

15 59. Plaintiff re-alleges and incorporates by reference each preceding
16 paragraph as though set forth at length herein.

17 60. Defendants have received a benefit, the retention of which would
18 unjustly enrich Defendants, by its conduct in overcharging Plaintiff and the Class.

19 61. Defendants should be required to return that benefit, disgorge their
20 unlawful gains and provide restitution to Plaintiffs and the Class.

21 **THIRD CAUSE OF ACTION**

22 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

23 **(Brought on behalf of the California Subclass)**

24 62. Plaintiff re-alleges and incorporates by reference each preceding
25 paragraph as though set forth at length herein.

26 63. Plaintiff has standing to pursue this claim under California's UCL
27 because Plaintiff suffered an injury-in-fact and lost money as a result of Defendants'
28

1 unfair competition. Specifically, Plaintiff expended more money in the transaction
2 than it otherwise would not have due to Defendants' conduct.

3 64. In the course of its trade or commerce, Defendants have engaged in and
4 continues to engage in a general business practice whereby it fails to charge Plaintiff
5 and the Subclass for services provided under the contract at the agreed upon rates as
6 described in Defendants' fee schedule, and provides misleading information
7 regarding this practice to increase the charges assessed to Plaintiff and the Subclass.

8 65. **Unfair business acts and practices:** Defendants are systematically (i)
9 overbilled and inflated fees for services provided to Plaintiff and the Subclass under
10 the contract, (ii) invoiced Plaintiff and the Subclass in an opaque manner, and (iii)
11 concealed both the types of fees and the specific amount of fees it charged Plaintiff
12 and the Subclass. Such practices are devoid of utility, outweighed by the gravity of
13 harm to Plaintiff and the Subclass who had to pay for the improper assessment of
14 fees and charges. Defendants' practices are also immoral, unethical, oppressive, and
15 unscrupulous and cause injury to consumers, which outweigh its benefits.

16 66. **Fraudulent business acts and practices:** Defendants' practices of
17 charging Plaintiff and the Subclass amounts that were above the agreed upon rates
18 for services provided under the contract constitute fraudulent business acts and
19 practices under the UCL because the conduct has a capacity to deceive consumers
20 who assume and believe that Defendants are acting in good faith, charge appropriate
21 rates, do not overcharge and act lawfully.

22 67. Each of Defendants' unlawful, unfair or fraudulent practices
23 enumerated above was the direct and proximate cause of financial injury to Plaintiff
24 and the Subclass. Plaintiff and the Subclass are entitled to have Defendants disgorge
25 and restore to Plaintiff and the Subclass all monies wrongfully obtained by
26 Defendants as a result of the conduct as alleged herein.

27 68. Pursuant to section 17203 of the California Business and Professions
28 Code, Plaintiff and the Subclass seek an order of this Court enjoining Defendants

1 from continuing to engage in unfair and deceptive practices and any other act
2 prohibited by law, including the acts set forth herein.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of the Class, requests
5 that the Court order the following relief and enter judgment against Defendants as
6 follows:

- 7 A. Declaring that this action is a proper class action, certifying the
8 nationwide Class and California Subclass, designating Plaintiff as
9 representative of the nationwide Class and California Subclass, and
10 appointing Plaintiff's attorneys as Class Counsel;
- 11 B. Enjoining Defendants from continuing the unfair and deceptive
12 business practices alleged in this complaint, including ceasing to
13 charge improperly assessed Administrative Fee(s), "Country
14 Charge(s)" or "Official Fee(s)" and providing accurate and reliable
15 information regarding its billing practices;
- 16 C. Requiring Defendants to disgorge, restore, and return all benefit and
17 monies wrongfully obtained;
- 18 D. Ordering Defendants to pay actual damages to Plaintiff and members
19 of the nationwide Class and California Subclass;
- 20 E. Ordering Defendants to pay an award of reasonable attorneys' fees and
21 costs of this action; and
- 22 F. Ordering such other and further relief as the Court deems necessary,
23 just, and proper.

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1 DATED: June 29, 2016

BROWN, NERI, SMITH & KHAN LLP

2
3 By: /s/ Geoffrey A. Neri

4 Geoffrey A. Neri
5 Ethan J. Brown

6 **DEMAND FOR JURY TRIAL**

7 Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby demand a
8 trial by jury of all issues so triable.

9
10 DATED: June 29, 2016

BROWN, NERI, SMITH & KHAN LLP

11
12 By: /s/ Geoffrey A. Neri

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